United States District Court
Eastern District of Tennessee
Greeneville Division

STATE OF TENNESSEE, *ex rel*. HERBERT H. SLATERY III, Attorney General and Reporter,	)	
Plaintiff,	)	Case No. 2:13-cv-00343
v.	)	GREER / CORKER
FESTIVA DEVELOPMENT GROUP, INC., *et al*.,	)	
Defendants.	)	

FINAL CONSENT DECREE

On December 30, 2013, Plaintiff, State of Tennessee ("Plaintiff"), commenced this civil law enforcement action pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108 ("Telemarketing Act"), and the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq*. ("TCPA"), to obtain a permanent injunction, rescission or reformation of contracts, restitution, disgorgement of ill-gotten gains, and other equitable and statutory relief for Defendants' acts or practices in connection with their sale, marketing, and servicing of timeshares, vacation products, and other goods and services in violation of the Telemarketing Act's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and the TCPA. [Doc. 1]. Plaintiff filed an Amended Complaint on August 28, 2015. [Doc. 111].

Plaintiff and Defendants, Festiva Development Group, Inc. (formerly known as Festiva Development Group, LLC) and ETourandTravel, Inc., have agreed to the entry of this Final Consent Decree ("Consent Decree"), including a stipulated permanent injunction, to resolve all matters of dispute between them in this action. Plaintiff and Defendants, having been represented by counsel and acting by and through said counsel, have consented to the entry of this Consent Decree without trial or adjudication of any issue of law or fact herein and without Defendants admitting liability for any violations alleged in the Amended Complaint.

NOW THEREFORE, Plaintiff and Defendants ("collectively Parties"), requesting that the Court enter this Consent Decree, and the Court, having considered the Consent Decree reached between the settling Parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

I. FINDINGS

1. This is an action by Plaintiff instituted under the Telemarketing Act, 15 U.S.C. §§ 6101–6108, the TSR, 16 C.F.R. Part 310, and the TCPA, Tenn. Code Ann. § 47-18-101 *et seq*. Pursuant to 15 U.S.C. § 6103(a), 16 C.F.R. § 310.7, and Tenn. Code Ann. § 47-18-108 of the TCPA, Plaintiff has authority to seek the relief contained herein.

2. This Court has jurisdiction over the subject matter of this case and over the Parties pursuant to 28 U.S.C. §§ 1331, 1337(a), and 15 U.S.C. § 6103, and supplemental jurisdiction over the state law claims of the State of Tennessee under 28 U.S.C. § 1367.

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), 15 U.S.C. § 53(b) and (c), and 15 U.S.C. § 6103(e).

4. The activities alleged in the Amended Complaint are "in or affecting the conduct of trade or commerce" in whole or in part in Tennessee, as those terms are defined in Tenn. Code Ann. § 47-18-103(19).

5. The Amended Complaint states claims upon which relief may be granted against Defendants under the Telemarketing Act, 15 U.S.C. § 6103(a), and the TCPA, Tenn. Code Ann.

§ 47-18-104(a) and (b).

6. Defendants have entered into this Consent Decree freely and without coercion, and acknowledge that they have read, understand, and are prepared to abide by the provisions of this Consent Decree.

7. As set forth in the release, Defendants agree that the entry of this Consent Decree resolves all matters of dispute between Defendants and Plaintiff arising from the Amended Complaint in this action, up to the date of the entry of this Consent Decree.

8. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Consent Decree and waive and release any claim relating to this action they may have against Plaintiff, its agencies, entities, employees, or agents by whatever name.

9. Defendants agree that the facts as alleged in the Amended Complaint in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by Plaintiff to enforce its rights to any payment pursuant to this Consent Decree, including, but not limited to, a nondischargeability complaint in any bankruptcy case. Defendants further stipulate and agree that the facts alleged in the Amended Complaint establish all elements necessary to sustain an action by Plaintiff pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523 (a)(2)(A), and that this Consent Decree shall have collateral estoppel effect for such purposes.

10. Entry of this Consent Decree is in the public interest.

II. DEFINITIONS

For purposes of this Consent Decree, the following definitions shall apply:

1. "Assisting and Facilitating" shall be defined as set forth in Section 310.3(b) of the TSR, 16 C.F.R. § 310.3(b).

2. “Clear(ly) and Conspicuous(ly)” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

a. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication, even if the representation requiring the disclosure is made in only one means.

b. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

c. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

d. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

e. On a product label, the disclosure must be presented on the principal display panel.

f. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

3. “Designated Consumer” shall mean each of the 300 Tennessee Consumers that have provided complaint information to Plaintiff and who are eligible for restitution and other Consumer relief under the restitution program.

4. “Consumer” shall be defined as set forth in Tenn. Code Ann. § 47-18-103(2).

5. “Defendants” or “Festiva” shall mean Festiva Development Group, Inc. (formerly known as Festiva Development Group, LLC) and ETourandTravel, Inc., individually, collectively, or in any combination, and any of their successors or assigns.

6. “Document” is synonymous in meaning and equal in scope to the usage of the

term in Fed. R. Civ. P. 34.

7. "National Do Not Call Registry" shall mean the National Do Not Call Registry, which is the "do-not-call" registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

8. "Negative Option Feature" shall be defined as set forth in Section 310.2(u) of the Telemarketing Sales Rule, 16 C.F.R. § 310.2(u).

9. "Outbound Telephone Call" shall be defined as set forth in Section 310.2(v) of the Telemarketing Sales Rule, 16 C.F.R. § 310.2(v).

10. "Person" shall be defined as set forth in Tenn. Code Ann. § 47-18-103(13).

11. "State Do Not Call Registry" shall mean the Do Not Call registry maintained by the Tennessee Regulatory Authority.

12. "Telemarketing" shall mean a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call, whether or not covered by the TSR, 16 C.F.R. Part 310.

STIPULATED PERMANENT INJUNCTION

III. PROHIBITIONS AGAINST UNFAIR, DECEPTIVE, MISLEADING, AND ABUSIVE BUSINESS AND TELEMARKETING PRACTICES

A. IT IS THEREFORE ORDERED that Defendants in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, specifically including, but not limited to, any vacation club membership or vacation product or service, are hereby permanently restrained and enjoined from engaging in, causing, or Assisting and Facilitating violations of any provision of the TSR including, but not limited to, the following:

1. Misrepresenting, directly or by implication, any material aspect of the

performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer;

2. Misrepresenting, directly or by implication, any material restriction, limitation, or condition to purchase, receive, or use their goods or services;

3. Misrepresenting, directly or by implication, any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a Consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the Consumer;

4. Misrepresenting, directly or by implication, that any Person or entity is affiliated with, endorsed or approved by, or otherwise connected to any Person;

5. Misrepresenting, directly or by implication, any material fact, including, but not limited to, the total costs to purchase, receive, or use, and the quantity of, their goods or services;

6. Misrepresenting, directly or by implication, any material term, condition, or limitation, of any offer with a Negative Option Feature;

7. Making a false, deceptive or misleading statement to induce any Person to pay for goods or services or to induce a charitable contribution;

8. Failing in any Outbound Telephone Call to disclose truthfully, promptly, and in a Clear and Conspicuous manner (i) the identity of the seller; (ii) the nature of the goods or services; and (iii) that the purpose of the call is to sell goods and services;

9. Initiating any Outbound Telemarketing Call to a Person's telephone number on the National Do Not Call Registry or the State Do Not Call Registry of Persons who do not wish to receive Outbound Telephone Calls to induce the purchase of goods or services, or to Persons who previously advised Defendants they did not wish to receive calls, unless:

    a. the seller has obtained the express agreement, in writing, of such Person to place calls to that Person. Such written agreement shall clearly evidence such Person's authorization that calls made by or on behalf of a specific party may be placed to that Person, and shall include the telephone number to which the calls may be placed and the signature of that Person. The Parties acknowledge that the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law; or

    b. the seller has an established business relationship with such Person and that Person has not previously stated that he or she does not wish to receive outbound telemarketing calls made by or on behalf of Defendants;

10. Initiating any outbound call to a Person at times other than between 8:00 a.m. and 9:00 p.m. local time at the called Person's location;

11. Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the Consumer;

12. Presenting to or depositing into, or causing another to present to or deposit into, the credit card system for payment, a credit card or debit card sales draft generated by a Telemarketing transaction that is not the result of a Telemarketing credit card or debit card transaction between the cardholder and merchant;

13. Obtaining access to a credit card system through the use of a business relationship or affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system;

14. Assisting and Facilitating or providing support to any Person, while knowing or consciously avoiding knowing, that such Person is engaged in acts and practices that violate the TSR; and

15. Failing to keep, for a period of 24 months from the date the record is produced, all:

    a. substantially different advertising, brochures, Telemarketing scripts, and promotional materials; and

    b. verifiable authorizations or records of express informed consent or express agreement required to be provided under the TSR.

B. IT IS FURTHER ORDERED that Defendants in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service in whole or in part of Tennessee, specifically including, but not limited to, any vacation club membership or vacation product or service, are hereby permanently restrained and enjoined from engaging in, causing, or Assisting and Facilitating violations of the TCPA, including, but not limited to, the following:

1. Misrepresenting the length of a sales presentation;

2. Interfering with the Consumer's ability or attempt to leave a sales presentation;

3. Making false statements about the current or future value, availability, or fees relating to a Consumer's interest in any current or future timeshare or membership;

4. Misrepresenting the nature or purpose of a sales presentation, including, but not limited to, representing that the meetings are “required,” “educational,” “informational,” “owners’ update,” “owners’ meeting,” “open house,” or words to that effect;

5. Soliciting Consumers to attend a presentation where they will be solicited to purchase additional goods or services without Clearly and Conspicuously disclosing that all or some part of the presentation will be a solicitation to purchase additional goods or services;

6. Misrepresenting that the Consumer has won, or will receive, a valuable prize gift or award;

7. Misrepresenting or failing to Clearly and Conspicuously disclose the deal or terms including, but not limited to, the length of time the offer is available, the limited availability of the offer, financing options, and/or cancellation policies;

8. Falsely representing that the Consumer is getting a “deal” or term or phrase of similar import because another Consumer has surrendered his or her membership or timeshare or Defendants have “foreclosed” on or otherwise taken back another Consumer’s membership or timeshare;

9. Misrepresenting the existence or terms of any “buy back” program;

10. Misrepresenting the existence or terms of any sales or rental assistance available to Consumers who wish to sell or rent their membership or timeshare, including, but not limited, the amount to which rental income will offset maintenance fees;

11. Misrepresenting the terms of any discount, refund, or credit a Consumer may receive upon the Consumer’s sale of another vacation ownership interest;

12. Failing to Clearly and Conspicuously disclose the terms and conditions of all refund policies;

13. Failing to Clearly and Conspicuously disclose, where applicable, that certain Internet-based goods and services will not be available to the Consumer until after the cancellation period has expired;

14. Misrepresenting the nature, quality, and amount of inventory available to accommodate Consumers’ preferences;

15. Misrepresenting the reservation process and procedures, including, but not limited to, failing to Clearly and Conspicuously disclose reservation windows for all membership levels;

16. Misrepresenting that Defendants own or control an entire resort;

17. Misrepresenting or failing to Clearly and Conspicuously disclose the existence

and terms of the Consumer's maintenance fee amounts and obligations, including, but not limited to, any obligation to pay special assessments;

18. Failing to Clearly and Conspicuously inform Consumers that they may not take any of Defendants' vacations until their annual or bi-annual maintenance fees are paid in full;

19. Misrepresenting the terms, value, and fees of travel exchange programs included in or sold with any membership;

20. Misrepresenting the type of vacation (*e.g.*, location, season, or length) available to the Consumer based on the level of membership or points purchased;

21. Misrepresenting to Consumers that their membership purchase, maintenance fees, or special assessments will be deductible on their income taxes;

22. Preventing or discouraging Consumers from reviewing documents in private or with an attorney;

23. Preventing or discouraging Consumers from exercising their cancellation or refund rights including misrepresenting any extension of the Consumer's cancellation deadline and falsely claiming a Consumer's cancellation notice was not received or was not timely submitted by the Consumer;

24. Failing to make promised websites reasonably available or accessible to Consumers;

25. Misrepresenting or failing to Clearly and Conspicuously disclose that certain travel discounts are not available unless Consumers purchase accompanying airfare;

26. Failing to timely mail invoices to Consumers, and collecting additional fees from Consumers who paid their fees late as a result of such untimely invoices;

27. Unreasonably withholding the resolution of contract cancellation and/or refund in response to Consumer complaints involving misrepresentation in the sales or marketing process;

28. Misrepresenting any material fact as it relates to the collection process, or any potential collection action including, but not limited to, the frequency of collection calls, referral to collection agencies, credit reporting, and/or filing suit if Consumers do not pay for the timeshares and vacation clubs, and will further require any debt collector Defendants engage to provide notice to Defendants of any Consumer complaint regarding misrepresentations;

29. Charging usurious interest rates;

30. Utilizing and seeking to enforce arbitration clauses in its agreements, contracts, or

clauses which do not comply with the Federal Arbitration Act or, alternatively, any applicable state law to the extent that such failure to comply would not otherwise render the clause unenforceable; and

31. Making misleading or deceptive statements or disclosures about the way Defendants will use and share Consumers' information.

C. IT IS FURTHER ORDERED that Defendants in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service in whole or in part in Tennessee, specifically including, but not limited to, any prize, gift, timeshare, travel promotion, or vacation product, are hereby permanently restrained and enjoined from engaging in, causing, or Assisting and Facilitating violations of the TSR and the TCPA, including, but not limited to, the following:

1. Failing to comply with Tenn. Code Ann. §§ 47-18-120 and -124;

2. Failing to Clearly and Conspicuously state the name and street address of the Person making the offer;

3. Misrepresenting that a Consumer has won a prize or gift, has been "selected," or is part of a select group eligible to receive, obtain, or claim a prize or a gift;

4. Failing to Clearly and Conspicuously disclose that a Consumer must participate in a sales promotion in order to claim a prize or gift;

5. Failing to Clearly and Conspicuously disclose the material terms and conditions of any prize or gift offered;

6. Failing to Clearly and Conspicuously disclose the approximate value of the prize or gift offered;

7. Failing to Clearly and Conspicuously disclose the odds, if applicable, of winning a prize; and

8. Failing to Clearly and Conspicuously disclose any applicable refund or cancellation policies.

D. IT IS FURTHER ORDERED that Defendants in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service in whole or in part in Tennessee, specifically including, but not limited to, any prize, gift, timeshare, travel promotion, or vacation product, are hereby permanently restrained and enjoined from engaging in, causing, or Assisting and Facilitating violations of the TCPA, including, but not limited to, the following:

1. As applicable, Defendants shall register and maintain those registrations with all Tennessee governmental entities and agencies as they relate to Telemarketing activities; and

2. If a Consumer indicates he/she should not have received a telephone call from Defendants because he/she is listed on the State and/or National Do Not Call Registry, Defendants shall notify the Consumer that they are placing him/her on Defendants' internal Do Not Call list and will not call him/her again, subject to any applicable exemptions.

E. IT IS FURTHER ORDERED that, for a period of 5 years from the date of entry of this Decree, Defendants shall not conduct sales presentations or closings in Tennessee, which prohibition shall include, but is not limited to, sales presentations commonly known as "in-house" or "frontline" sales, dinner parties, and other events where additional points or "upgrades" are sold to existing Consumers in Tennessee.

F. IT IS FURTHER ORDERED that, for a period of 5 years from the date of entry of this Decree, Defendants shall not conduct any face-to-face or in-Person marketing in Tennessee.

IV. CONSUMER RELIEF

IT IS FURTHER ORDERED that:

A. Restitution. This Consent Decree is entered in favor of Plaintiff and against Defendants jointly and severally, in the amount of $1,250,000.00, as restitution to certain eligible Consumers for Defendants' alleged unlawful practices under the Telemarketing Act, the TSR, and the TCPA. Plaintiff will develop a restitution program, the terms of which are at the sole discretion of the Tennessee Attorney General. Defendants waive the right to contest any restitution program or selection of remedies by Plaintiff under this Consent Decree.

B. Debt Cancellation. Pursuant to the Tennessee Attorney General's restitution program, Defendants shall provide up to $1,000,000.00 in outstanding debt cancellation to Designated Consumers. Within 60 days of entry of this Consent Decree, Plaintiff shall provide Defendants with the names and contract numbers (if known) of the Designated Consumers and, within 15 days of receipt of this list, Defendants shall provide Plaintiff with a sworn statement specifying the name, address, telephone number(s), and current outstanding loan balance for each Designated Consumer as of the date of the report, if any, regardless of whether active or inactive.

C. Sales and Financing Contract or Agreement Cancellation. Defendants shall agree to cancel or cause to be canceled all sales and financing contracts and agreements for Designated Consumers who elect to terminate their contract or other relationship with Defendants within 5 business days of the request by the restitution administrator. Designated Consumers will be given a finite amount of time from the date they are notified of the offer to make an election, not to exceed 60 days.

D. No Collection. Defendants shall not make attempts to further enforce any provision of a sales or financing contract or agreement or collect upon the same for any of the Designated Consumers who elect to terminate their contract or other relationship with Defendants or cause any other Person to do so.

E. Correction of Credit Reporting Agency Records. Defendants shall cooperate fully and in a timely manner, not to exceed 30 days of a request by the restitution administrator, to resolve and correct, or cause to be resolved and corrected, a credit rating or credit standing with any credit reporting agency for Designated Consumers who elect to participate in the restitution program and notify the restitution administrator of the steps that Defendants have taken to resolve and correct the Designated Consumers' credit rating or credit standing with such credit rating agencies.

F. Restitution Administrator. Plaintiff shall be solely responsible for retaining the restitution administrator for the restitution program to be conducted pursuant to this Consent Decree. Plaintiff shall pay for the costs incurred by the restitution administrator out of the Payment to the State pursuant to Section V.

G. Defendants shall cooperate fully with the restitution administrator, including responding to any request for information within 30 days of the request.

V. PAYMENT TO THE STATE

This Consent Decree is entered in favor of Plaintiff and against Defendants jointly and severally, in the amount of $750,000.00, as civil penalties for Defendants' alleged unlawful practices under the Telemarketing Act, the TSR, and the TCPA, and as reimbursement to Plaintiff for its attorneys' fees and costs, to be distributed at the sole discretion of the Tennessee Attorney General.

VI. PAYMENT PLAN AND FORBEARANCE ON EXECUTION AND DEFAULT

A. Payment Plan. Pursuant to Sections IV (Consumer Relief) and V (Payment to the State), Defendants shall make four quarterly payments of $500,000.00 for a total of $2,000,000.00 to Plaintiff for Restitution and the Payment to the State, with such installment payments to be made on March 1, June 1, September 1, and December 1, 2016, respectively. Payments made to Plaintiff under this Consent Decree shall be made by electronic funds transfer pursuant to the written directions provided by counsel for the Tennessee Attorney General.

B. No execution or garnishment on the monetary portion of this Decree shall issue so long as Defendants make payments in accordance with paragraph VI(A) herein. In the event Defendants fail to make any such payment within 5 days of its due date, Plaintiff agrees to give

Defendants notice of default by electronic mail to erichardson@bassberry.com and cclaussen@zhcompany.com and by telephone to Catherine Claussen at (828) 348-2505 x 4417. If Defendants, or any person or entity acting on their behalf in the event of a default, fail to cure the default within 45 days of receipt of the notice of default, the entire monetary balance under this Decree then remaining shall become due and payable and the Attorney General may take any appropriate action to enforce the consent decree and collect the monetary balance by execution, garnishment, or other legal process, together with interest pursuant to Tenn. Code Ann. § 47-14-121 from the date of entry of this Consent Decree. Defendants agree to pay all attorneys' fees and costs including, but not limited to, court costs associated with any such collection efforts.

C. In the event of default of any monetary provision of this Consent Decree or any substantive proceeding based upon the monetary amount, Defendants agree that all statements set forth in Plaintiff's Amended Complaint shall be deemed to be admitted for the limited purpose of establishing non-dischargeability of all sums paid hereunder. Specifically, Defendants agree and will not contest that all sums are non-dischargeable under 11 USC § 1141 (d)(4). Defendants further agree that, in any subsequent proceeding based upon the monetary amount set forth in this Decree, Defendants shall not contest Plaintiff's right to obtain the full amount due and owing, shall reaffirm any such debt if necessary in order to completely fulfill Defendants' monetary obligations to Plaintiff, and shall not object in any manner or form that is contradictory to the terms of this Consent Decree to any proof of claim filed by Plaintiff.

D. Defendants have represented and warranted that they have reviewed their financial situations and that they are currently solvent within the meaning of 11 U.S.C. § 547(b)(3), and will not be rendered insolvent by their payments to Plaintiff hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this agreement, the Parties have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendants, within the meaning of 11 U.S.C. § 547(c)(1), and concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange; and, the following are correct statements:

1. Defendants were not insolvent within the meaning of 11 U.S.C. § 548(a)(1)(B)(ii) on the date of these promises, covenants, and obligations and did not become insolvent within the meaning of that section as a result of these promises, covenants, and obligations; and,

2. Defendants are receiving reasonably equivalent value, so as to take these promises, covenants, and obligations outside the purview of 11 U.S.C. § 548 (a)(1)(B)(i).

Defendants also agree that this is a payment of debt in the ordinary course of business as set forth in 11 U.S.C. § 547(c)(1)(A) and (B). Defendants have represented and warranted to Plaintiff that they have no present intention to file bankruptcy during the course of this payment plan.

VII. COOPERATION WITH PLAINTIFF

IT IS FURTHER ORDERED that:

A. Defendants shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint, cooperate in good faith with Plaintiff, and use their best efforts to ensure that their principals, officers, directors, employees, and other Persons in this matter cooperate with Plaintiff, and appear at such places and times as Plaintiff shall reasonably request, after written notice, for interviews, conferences, and for such other matters as may be reasonably requested by Plaintiff.

B. In addition, Plaintiff is authorized to have its representatives pose as Consumers, employees, or suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice. Further, Plaintiff's representatives may record (audio and/or video) any or all aspects of their interaction with Defendants without notice to Defendants. Defendants agree to void any sale that is conducted by an undercover operative on behalf of Plaintiff, upon notification by Plaintiff.

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that in order that compliance with the provisions of this Consent Decree may be verified:

A. For a period of two years from the date of entry of this Consent Decree, Defendants shall, on an annual basis on March 1, 2017 and March 1, 2018, notify and/or provide Plaintiff the following:

1. Any changes in any of Defendants' principal place(s) of business, mailing address(es), and telephone number(s);

2. Any changes in a Defendant's name or use of any aliases or fictitious names;

3. Any changes in a Defendant's structure, including, but not limited to: change of control or ownership, dissolution, merger, or the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Decree; and

4. A written report to Plaintiff, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied and are complying with this Consent Decree.

B. Defendants shall notify Plaintiff of the filing of a bankruptcy petition by any Defendant within 15 days of filing;

C. For the purposes of this Consent Decree, Defendants shall, unless otherwise directed by Plaintiff's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications required by this Consent Decree to:

Deputy Attorney General
Office of the Tennessee Attorney General
Consumer Protection and Advocate Division
315 Deaderick Street, 20th Floor
Nashville, Tennessee 37243
Re: State of Tennessee v. Festiva Development Group, Inc.
Case No. 2:13-cv-00343.

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an email version of such report or notification to all counsel of record for Plaintiff; and

D. For purposes of the compliance process required by this Consent Decree, Plaintiff is authorized to communicate directly with Defendants, but shall notify Defendants' counsel in writing of any such communication.

IX. RECORDKEEPING

IT IS FURTHER ORDERED that any Defendant, for any business for which it, individually or in concert with others, is the majority owner or directly or indirectly controls, shall keep records subject to the applicable federal or state laws in which each Defendant does business, and unless otherwise stated herein, for a period of 5 years from the date of entry of this Consent Decree, is hereby restrained and enjoined from failing to retain the following records:

A. Records pertaining to sales made to Tennessee Consumers containing the names, addresses, telephone numbers, contracts or other agreements, items or services purchased, accounting for each Consumer, including all amounts paid to date (if any), and all outstanding amounts owed on loans, regardless of whether active or inactive, and description of terms or services purchased, to the extent such information is obtained in the ordinary course of business;

B. Complaints, refund requests, and chargeback requests (whether received directly or indirectly, such as through a third party) for Tennessee Consumers and any responses to those complaints or requests, to the extent such information is obtained in the ordinary course of business;

C. As it relates to Tennessee Consumers, copies of all of Defendants' sales scripts, training materials, advertisements, or other marketing materials for a period of two years; and

D. All written authorizations and express informed consents required by Section III (Prohibitions), copies of all steps taken to request corrections to credit ratings or credit standings for Designated Consumers who participated in the restitution program required by Section IV (Consumer Relief), copies of acknowledgments of receipt of this Consent Decree required by Sections X (Distribution of Consent Decree), and all reports submitted to Plaintiff pursuant to Section VIII (Compliance Reporting) of this Consent Decree.

E. Copies of records required by this Section shall be provided at no cost to Plaintiff upon written request within 10 business days.

X. DISTRIBUTION OF CONSENT DECREE

IT IS FURTHER ORDERED that, for a period of 3 years from the date of entry of this Consent Decree, Defendants shall deliver copies of this Consent Decree as directed below:

A. Defendants must deliver a copy of this Consent Decree to (1) all principals, officers, directors, and managers of their businesses; and (2) any business entity resulting from any change in structure set forth in Section VIII (Compliance Reporting). Additionally, Defendants agree to communicate to sales and marketing employees, including, but not limited to, telemarketers, the terms of this Consent Decree that are applicable to them. For current principals, officers, directors, and managers of Defendants, delivery shall be within 5 business days of the date of entry of this Consent Decree. For new principals, officers, directors, and managers of Defendants, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Section VIII (Compliance Reporting) of this Consent Decree, delivery shall be at least 10 business days prior to the change in structure.

B. Defendants must secure a signed and dated statement acknowledging receipt of the Consent Decree, within 30 days of delivery, from all Persons receiving a copy of the Consent Decree pursuant to this Section.

XI. PROTECTING CONSUMER PRIVACY

A. Defendants agree not to market to the Designated Consumers who elect to terminate their contract or other relationship with Defendants.

B. Any lists and reports provided to Plaintiff by Defendants or to the restitution administrator pursuant to this Consent Decree and in the possession or control of any Defendant shall not be released to any Person, to protect the interest of Consumer privacy and to prevent further marketing to these Consumers and possible identity theft, other than law enforcement authorities or pursuant to state or federal law.

XII. PENALTIES FOR FAILURE TO COMPLY WITH THE TENNESSEE CONSUMER PROTECTION ACT

Pursuant to the provisions of the TCPA, Tenn. Code Ann. § 47-18-108(c), any knowing violation of the terms of this Consent Decree shall be punishable by civil penalties of not more than $2,000.00 for each violation, in addition to any other appropriate sanctions including, but not limited to, contempt sanctions and the imposition of attorneys' fees and costs. Upon execution and filing of this Consent Decree, any subsequent failure to comply with the terms hereof is prima facie evidence of a violation of the TCPA.

XIII. THIRD PARTY RIGHT OF ACTION

Other than a set-off as to actual monies received, nothing in this Consent Decree shall be construed to affect, limit, or alter any private or public right of action that a Consumer, Person, entity, or any local, state, or federal or other government entity, may hold against any Defendant. For purposes of set-off, the restitution administrator will provide to Defendants an accounting of the restitution payments following the conclusion of the restitution program.

XIV. SEVERABILITY

If any clause, provision, or section of this Consent Decree shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Consent Decree and this Consent Decree shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

XV. SOVEREIGN IMMUNITY

Nothing in this Consent Decree shall be construed to waive any claim of Sovereign Immunity Plaintiff may have in any action or proceeding.

XVI. RELEASE

This Consent Decree only resolves the Telemarketing Act, the TSR, and the TCPA causes of action raised in the Amended Complaint by the Tennessee Attorney General against Defendants based on the factual allegations contained in the Amended Complaint prior to the date of entry of this Consent Decree. This Release does not release in any way:

A. Any private right of action;

B. Any tax liability of any Defendant;

C. Any non-settling Defendant’s liability;

D. Any criminal liability; or

E. Any subsequent enforcement action against any Defendant for conduct occurring after the time of the filing of the Consent Decree.

XVII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of collection, construction, modification, and enforcement of this Consent Decree. Defendants agree to pay all court costs and reasonable attorneys' fees and costs associated with any successful action by Plaintiff to enforce any provision of this Decree against Defendants.

XVIII. WAIVER

No waiver, modification, or amendment of the terms of this Decree shall be valid or binding unless made in writing, signed by both Parties, and approved by this Honorable Court, and then only to the extent set forth in such written waiver, modification, or amendment.

XIX. ENTRY OF ORDER

IT IS FURTHER ORDERED that there is no just reason for delay, and the Clerk of Court is hereby directed to enter this Consent Decree immediately.

XX. PAYMENT OF COURT COSTS

IT IS FURTHER ORDERED that all court costs associated with this action shall be borne jointly and severally by Defendants. No costs shall be taxed to the State of Tennessee as provided by Tenn. Code Ann. § 47-18-116.

IT IS SO ORDERED.

____
United States District Judge

SO STIPULATED

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed on February 19, 2016 and that notice of this filing will be sent by operation of the Court's ECF system to all parties of record.

/s/ Olha N.M. Rybakoff
Olha N.M. Rybakoff (BPR # 24254)